



# Key Decisions for Early Stage Companies

Presentation at the StartupHPC Meet-Up  
New Orleans, LA  
November 17, 2014

Bradley J. Gersich, Partner  
DLA Piper LLP (US)  
650.833.2074  
[bradley.gersich@dlapiper.com](mailto:bradley.gersich@dlapiper.com)

- LLC, S-corp or C-corp
  - who are your stockholders now, and who will they be eventually?
  - how important is the “tax pass through” status to your stockholders (especially your investors)?
  - what type of equity incentives do you plan to award to your outside directors, employees and consultants?
  
- Delaware vs. the rest of the U.S.
  - Delaware offers convenience and long-term value (IPO), but can have disadvantages for founders

- Allocations
  - Percentages vs. Shares
  - Dilution Protection for Economics and Control
  - Equity Incentives for Advisors and Service Providers
  
- Vesting
  - Meritocracy
  - Democracy
  - Capitalism

- Fundraising Sources
  - Friends and Family
  - The Crowd
  - Angels: Individuals and Groups
  - Venture Capitalists
  - Venture Debt
  
- Securities
  - Common Stock vs. Preferred Stock
  - Convertible Debt
  - Simple Agreements for Future Equity (SAFEs)
  - Loans with Warrant “Kickers”

- Contractors and Employees
  - The difference and the consequence of mis-classification
  - Minimum Wage laws apply to everyone
  
- Tools of Recruitment
  - Equity Incentives – Options vs. Restricted Stock vs. RSUs
  - Culture, Responsibility and Title
  - Beware of promising “Deferred Wages”

# The Basics of Smart Talent Management



- Inquire whether potential employee has non-compete or other restrictive covenants
- Instruct employee not to use confidential information of prior employer
- Have employee sign, at time of employment, a Confidentiality and an Assignment of Inventions Agreement
- Secure written agreement with all advisors and consultants ensuring Company ownership of “work-for-hire” and affirming the components of an independent contractor relationship
- Ensure all offer letters for employees have clear “at will” language

- Leveraging Lower Cost Resources Abroad
  - IP – Ownership and Protection
  - Tax Planning
  - Equity Incentives for Service Providers

- The Power of the Patent
  - Playing Defense: ensuring freedom to operate
  - Playing Offense: preventing others from utilizing your invention – or at least forcing them to pay handsomely to do so
  - Patent Litigation: the sport of kings and often is a “bet the company” event
- The Power of the Trademark
  - Playing Defense: ensuring freedom of use
  - Playing Offense: preventing others from using the mark
  - What’s the Big Deal? Having to change a name after the fact may not be big in terms of out of pocket costs, but can damage to brand can mean lost revenue



- Ownership of IP generated from collaborative effort
- Indemnities and performance warranties
- Exclusivity rights
- Customers seeking a “right of first refusal” or “right of notice” with regards to an acquisition of your company

- Who Can Help Me Navigate All of This?
  - Community of Fellow Founders
  - Incubators
  - Advisors
  - Investors
  - Lawyers
    - Many firms, like ours, will offer deferred or discounted fee arrangements in the beginning of the relationship to help you get off the ground

**Thanks for your time...**



QUESTIONS?

Bradley J. Gersich

DLA Piper LLP (US)

(650) 833.2074

[bradley.gersich@dlapiper.com](mailto:bradley.gersich@dlapiper.com)